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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/738,610 12/15/00 CHEN

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EXAMINER
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HM22/0604

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ART UNIT	PAPER NUMBER

1614

DATE MAILED:

06/04/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/738,610

Applicant(s)

CHEN ET AL.

Examiner

Brian-Yong S Kwon

Art Unit

1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 18) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

## DETAILED ACTION

### *Priority*

Acknowledgment is made of applicant's claim for foreign priority based on an application filed in EP 99125639.7 on December 22, 1999. It is noted, however, that applicant has not filed a certified copy of EP 99125639.7 the application as required by 35 U.S.C. 119(b).

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not

commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt et al. (US 4605666).

Claims read on a powder or granule composition comprising L-ascrobic acid and/or a pharmaceutical acceptable salt thereof, and about 0.1 to about 10% by weight of pectin, calculated based on the total weight of the composition thereof; and a process of preparing claimed composition. Further limitations include sodium ascorbate as a salt of L-ascorbic acid in claim 3; and a lubricant (i.e., stearic acid, a magnesium salt of stearic acid, a calcium salt of stearic acid, and glyceryl behenate 45) and an excipient (i.e., dextrinized sucrose, microcrystalline cellulose, and starch), as a secondary ingredient in claim 10 and 13 respectively.

Schmidt et al. teach a powder composition prepared by spray drying comprising an aqueous slurry of a water-soluble vitamin (i.e., sodium ascorbate, ascorbic acid, calcium ascorbate, etc...); a binder (i.e., microcrystalline cellulose, etc...); a lubricant (i.e., stearic acid, magnesium stearate, calcium stearate, etc...); and excipient (i.e., pectin, starch, etc...). See from column 1 line 36 to column 2 line 53 as well as Example 1-5. The reference also teaches that "the components described herein are added in amounts such that the final powder formed will contain at least 80% (preferably at least 9) percent by weight of the water soluble vitamin, less than 15 (preferably less than 9) percent by weight of binder...0.2 to 5 percent by weight of the lubricant and less than 3 percent of other excipients...those skilled in the art may discover better proportions with them and

for specific purposes” (see from column 2 line 54 to column 3 line 2). The reference teaches that the solid content in the aqueous slurry is between 6.7 (Example 3) and 60 (Example 1) percent by weight which is within the claimed range of the instant invention. However, the reference fails to teach the specific utility of pectin in combination of sodium ascorbate or ascorbic acid to stabilize color of claimed invention (see page 1, lines 8-13; and page 2, lines 22-29 of the instant application)

Newlin et al. teach the use of pectin as anti-browning agent in peanut butter composition. (see column 1, lines 5-46).

The teaching of Schmidt et al. differs from the claimed invention in the specific utility of pectin in claimed composition; and the use of citrus pectin. However, it would have been obvious to a person skilled in the art to formulate the composition containing L-ascorbic acid and/or its salts in combination with pectin such that the stability of color of claimed composition could be enhanced. One having ordinary skill in the art would have motivated to use well known anti-browning agent or color improving agent such as pectin (See also Chiralt et al. 1999 IFT Annual Meeting; and “A Guide to Halal Food Selection”, Hussaini et al., 1993) to prevent browning or improve coloring of claimed composition containing L-ascorbic acid and/or its salts. Additionally, the selection of citrus pectin among pectins is well considered within the skill of artisan, absent evidence to the contrary.

### ***Conclusion***

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Kwon whose telephone number is (703) 308-5377.

The examiner can normally be reached Monday through Friday from 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mariann Cintins, can be reached on (703) 308-4725. The fax number for this Group is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

Brian Kwon

**ZOHREH FAY**  
**PRIMARY EXAMINER**  
**GROUP 1600**

